

Robert S. Wagner, OSB #84411  
David C. Lewis, OSB #95334  
MILLER & WAGNER LLP  
Trial Lawyers  
2210 N.W. Flanders Street  
Portland, OR 97210-3408  
Telephone: (503) 299-6116  
Facsimile: (503) 299-6106  
E-mail: [rsw@miller-wagner.com](mailto:rsw@miller-wagner.com)  
[dcl@miller-wagner.com](mailto:dcl@miller-wagner.com)

## Of Attorneys for Defendant City of Corvallis

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

BRIAN J. NOAKES AND ASLAN NOAKES, )  
Plaintiffs, ) Case No. CV08-6103 HO  
v. ) DEFENDANT CITY OF CORVALLIS'  
DAVID COX AND CITY OF CORVALLIS, ) ANSWER TO PLAINTIFFS' COMPLAINT  
Defendants. ) (Civil Rights/False Arrest/Negligence)  
 ) DEMAND FOR JURY TRIAL  
 )

In answer to plaintiffs' Complaint, defendant City of Corvallis (hereinafter "defendant") admits, denies and alleges as follows:

1.

Admits jurisdiction is proper in federal court based on the allegations in plaintiffs' Complaint.

2

Admits defendant David Cox was a police officer for the City of Corvallis acting at all times within the course and scope of his employment and under color of law and that defendant is a municipal entity organized under Oregon law.

11

3.

Defendant hereby incorporates by reference the following paragraphs of defendant David Cox's Answer: 6-14 and 16.

4.

With regard to paragraph 29 of the Complaint, defendant admits the first two sentences, but denies the balance.

5.

Except as expressly admitted above, defendant denies the remaining allegations of plaintiff's Complaint.

BY WAY OF FURTHER ANSWER AND FOR A FIRST AFFIRMATIVE DEFENSE, defendant alleges:

6.

Plaintiff Aslan Noakes fails to state a claim for relief against defendant.

BY WAY OF FURTHER ANSWER AND FOR A SECOND AFFIRMATIVE DEFENSE, defendant alleges:

7.

In the event the Complaint can be construed to state a cognizable claim by Aslan Noakes, then any so called "force" used by defendant Cox was reasonable under the circumstances.

BY WAY OF FURTHER ANSWER AND FOR A THIRD AFFIRMATIVE DEFENSE, defendant alleges:

8.

Plaintiffs' state law claims are subject to the conditions, limitations and immunities of Oregon's Tort Claim Act, ORS 30.260 *et. seq.*, including, but not limited to, Tort Claim Notice, damage limitations and discretionary immunity.

///

BY WAY OF FURTHER ANSWER AND FOR A FOURTH AFFIRMATIVE DEFENSE,  
defendant alleges:

9.

At the moment Officer Cox decided to arrest Brian Noakes, his actions were based on probable cause and were justified.

BY WAY OF FURTHER ANSWER AND FOR A FIFTH AFFIRMATIVE DEFENSE,  
defendant alleges:

10.

Plaintiff Brian Noakes' alleged injuries and damages, if any, were caused by his own fault or negligence in one or more of the following particulars:

- a. His refusal to be evaluated by a Drug Recognition Expert; and
- b. His decision to drive to a tavern late at night while tired, ill and after having consumed cold medicine.

WHEREFORE, having fully answered plaintiffs' Complaint, defendant prays for judgment in its favor, to include an award of its costs, disbursements and attorney fees incurred herein pursuant to 42 U.S.C. § 1988 because some or all of plaintiffs' federal claims are frivolous.

Defendant City of Corvallis respectfully demands trial by jury.

DATED this 5<sup>th</sup> day of June, 2008.

MILLER & WAGNER LLP

By: /s/ Robert S. Wagner

David C. Lewis, OSB #95334  
Robert S. Wagner, OSB #84411  
Of Attorneys for Defendant  
City of Corvallis  
(503) 299-6116

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DEFENDANT CITY OF CORVALLIS' ANSWER TO PLAINTIFFS' COMPLAINT (Civil Rights/False Arrest/Negligence), on the following party at the following address by notice of electronic filing using the CM/ECF system:

Daniel A. Rayfield  
Weatherford, Thompson, et al.  
130 W. First Avenue  
P.O. Box 667  
Albany, Oregon 97321  
(541) 926-2255  
[drayfield@wtlegal.com](mailto:drayfield@wtlegal.com)  
Of Attorneys for Plaintiffs

Steven A. Kraemer  
Hoffman, Hart & Wagner, LLP  
20<sup>th</sup> Floor  
1000 S.W. Broadway  
Portland, Oregon 97205  
(503) 222-4499  
[sak@hhw.com](mailto:sak@hhw.com)  
Of Attorneys for Defendant David Cox

DATED this 5<sup>th</sup> day of June, 2008.

/s/ Robert S. Wagner  
David C. Lewis, OSB #95334  
Robert S. Wagner, OSB #84411  
(503) 299-6116